UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,738	08/22/2001	Ingo Molnar	019322-000340	9016

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EXAMINER
GIANOLA, JOHN F

ART UNIT	PAPER NUMBER
2135	

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _22 August 2001_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-12_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-12_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _22 August 2001_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _20020122_.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1.   Claims 1-12 have been examined.

2.   Claims 1-12 have been rejected.

Specification

3.   The disclosure is objected to because of the following informalities: in paragraph

[0002], application does not list referenced applications. Appropriate correction is

required.

Claim Rejections - 35 USC § 101

4.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

5.   Claims 5, 6, 7, and 8 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter. Claim 5 describes "A computer

program product having computer program code embodied therein..." Computer code

alone constitutes "functional descriptive material" and as such, is not statutory subject

matter. Functional descriptive material becomes statutory when it "...is recorded on

some computer-readable medium..." (see the Manual of Patent Examining Procedure

2106). Even though Claim 5 includes the reference "...for enabling a server..." and

Claim 6 contains "...on the communication server" these phrases, as written in the

claim, do not define the computer program as material stored on a computer-readable

medium. Instead, the phrases "...for enabling a server..." and "...on the communication

server" characterize the program as capable of and intended for execution in a server,

rather than as functional descriptive material that is "functionally interrelated to the

medium."

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7.   Claims 1, 3, 9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being

anticipated by Iyengar et. al. "An Analysis of Web Server Performance" (see attached

Notice of References Cited).

8.   With regards to Claims 1 and 11, Iyengar et. al. disclose web servers transmitting

pages that contain both static and dynamic content (see page 1944, column 2, lines 6-

19);. Thus Iyengar et. al. disclose:

    Receiving the application protocol request from the client application;

    Creating at least one dynamic protocol object to form at least a portion of a reply

        to the application protocol request wherein the reply is disposed to include

        embedded, static protocol objects;

    Sending the at least one dynamic protocol object to the client application;

Retrieving at least one static protocol object; and

Sending the at least one static protocol object to the client application to

complete the reply to the application protocol request at the client

application.

9.   With regards to Claims 3 and 12, Iyengar et. al. disclose:

The application protocol request and replay are formatted according to a

hypertext transmission protocol (http) (see page 1944, column 2, lines 6-

19).

10.   With regards to Claim 9, Iyengar et. al. disclose the web servers as noted above.

Iyengar et. al. also note a cache for frequently accessed dynamic pages (see page

1946, column 1, lines 8-12). As noted on page 1944, these dynamic pages often include

static files, thus Iyengar et. al. disclose:

A cache;

Means for receiving the application protocol request from the client application;

Means for creating at least one dynamic protocol object to form at least a portion

of a reply to the application protocol request wherein the reply is disposed

to include embedded, static protocol objects;

Means for sending the at least one dynamic protocol object to the client

application;

Means for retrieving at least one static protocol object; and

Means for sending the at least one static protocol object to the client application

to complete the reply to the application protocol request at the client

application.

Claim Rejections - 35 USC § 103

11.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

13.   Claims 2, 4, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Iyengar et. al. in view of Pai et. al. "IO-Lite: A Unified I/O Buffering and Caching

System" (see the attached Notice of References Cited). As noted above, Iyengar et. al.

disclose the limitations in Claims 1 and 9. Iyengar et. al., do not disclose a protocol

object cache disposed within an operating system kernel. Pai et. al., however, teach

using a cache system in a web server, that system being an operating system kernel

module (see Pai et. al.: page 47, lines 35-36; page 48, lines 11, 31-35; and page 49,

lines 3-10 and lines 27-28). It would have been obvious to one of ordinary skill in the art

at the time of the invention to combine Iyengar and Pai in order to increase the

efficiency of the computer system.

Conclusion

14.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. The prior includes: Mutschler et al. ""Method for Dynamically

Embedding Objects Stored in a Web Server Within HTML for Display by a Web

Browser" (US Pat. No. 5,974,430) and Moshe Bar "Kernel Korner: kHTTPd, a Kernel-

Based Web Server" (see attached Notice of References Cited).

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to John F Gianola whose telephone number is (571)272-

3848. The examiner can normally be reached on Mon - Fri (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kim Vu can be reached on (571)272-3859. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

jfg

JACK B. HARVEY
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